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GOVERNOR



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ADMINISTRATOR

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**STATE OF HAWAII  
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**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE HOUSE COMMITTEE  
ON  
FINANCE**

March 4, 2015, 1:30 p.m.

**HOUSE BILL 1292 HD 1  
RELATING TO PROCUREMENT**

Chair Luke, Vice-Chair Nishimoto, and members of the committee, thank you for the opportunity to submit testimony on HB 1292 HD 1. The State Procurement Office (SPO) submits the following comments.

Earlier this year, the SPO delivered to the Legislature a report detailing the findings of a study the SPO conducted regarding the feasibility of requiring past performance as a factor in awarding any public contract in Hawai'i. This measure and several similar bills are a result of the findings and recommendations in the "Report on the Study on Past Performance Consideration in Hawaii Contracting" (SPO, January 2015).

The feasibility of mandating a past performance evaluation is clear. What is not clear is how the Procurement Officer would determine past performance. Across our 21 procurement jurisdictions we currently do not have a common interpretation or understanding of past performance nor do we have uniform processes to accomplish objective past performance evaluations that are consistent throughout the State.

To further develop standards and processes for past performance evaluations that are consistent, fair, and predictable, the SPO supports engaging with stakeholders, leveraging the continuing work of the already existing Procurement Task Force.

In 2013, the Twenty-Seventh Legislature adopted SCR 92 SD 2, which requested the Comptroller establish a Procurement Task Force to study the State procurement code and identify amendments that would increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, to include analysis on past performance. The Procurement Task Force is set to dissolve on June 30, 2015. Because the membership is very similar to that identified in this measure and because consideration of past performance and its statewide implementation can fit within the Procurement Task Force's scope of work, the SPO suggests this group continue its work by focusing on standards for past performance.

To accomplish this, the SPO suggests the following changes to HB1292 HD1:

- Replace Section 2(a) thru 3(c) as follows:

~~SECTION 2. [(a) The state procurement office shall convene a past performance task force to examine the issue of past performance and establish the factors that should be considered when evaluating a construction industry contractor's past performance for the purposes of awarding a construction contract under Chapter 103D, Hawaii Revised Statutes.~~

~~—(b) The task force shall consist of the following members:~~

~~—(1) The administrator of the state procurement office, or the administrator's designee, who shall serve as the chair;~~

~~—(2) The director of commerce and consumer affairs, or the director's designee;~~

~~—(3) The comptroller, or the comptroller's designee;~~

~~—(4) The director of transportation, or the director's designee;~~

~~—(5) The president of the University of Hawaii, or the president's designee;~~

~~—(6) The superintendent of education, or the superintendent's designee;~~

~~—(7) The director of the department of design and construction of the city and county of Honolulu, or the director's designee;~~

~~—(8) One representative from the General Contractors Association of Hawaii;~~

~~—(9) One representative from the Building Industry Association of Hawaii; and~~

~~—(10) One representative from the Subcontractors Association of Hawaii.~~

~~—(c) When establishing the factors to be considered in evaluating a construction industry contractor's past performance, the task force shall include:~~

~~—(1) A requirement that the review be limited to the three years immediately preceding the contractor's bid for a public construction contract;~~

~~—(2) A requirement that a past performance review shall only apply to construction contracts valued at \$1,000,000 or more; and~~

~~(3) Criteria and standards to ensure that the evaluation of past performance is conducted in an objective manner.]~~ (a) The Comptroller shall continue to convene the Procurement Task Force established in accordance with SCR92 SD2 SLH/2012 to study the cost impacts that the procurement process has had for public works construction projects, and specifically to examine and recommend past performance standards and statewide processes in order to promote economy, efficiency, effectiveness, and impartiality in procurement for state and county governments.

(b) The Comptroller, or the Comptroller's designee, is requested to continue to serve as chair of the task force.

(c) The Comptroller is requested to solicit representatives from the following entities to serve on the task force, provided that those persons designated shall be knowledgeable of procurement procedures and issues within their respective organizations:

- (1) The State Procurement Office;
- (2) The University of Hawaii;
- (3) The Department of Education;
- (4) The Office of Hawaiian Affairs;
- (5) The Department of Transportation;
- (6) A county procurement department;
- (7) A county board or department of water supply;
- (8) The semi-autonomous public transit agency of the City and County of Honolulu;
- (9) The Subcontractors Association of Hawaii;
- (10) The General Contractors Association of Hawaii;
- (11) The Hawaii Building and Construction Trades Council.
- (12) AFL-CIO; and
- (13) The Hawaii Construction Alliance.

(d) The task force is requested to:

- (1) Identify and propose amendments, if any, to the state procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and processes.

~~[(d)]~~(e) Task force members shall serve without compensation but shall be reimbursed for all necessary expenses, including travel expenses, which are incurred in the performance of their duties as members of the task force.

~~[(e)]~~(f) No member shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the task force.

~~[(f)]~~(g) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2016.

~~[(g)]~~(h) The task force convened pursuant to this Act shall cease to exist on June 30, 2016.

SECTION 3. This Act shall take effect upon its approval.

If this committee decides not to avail the State of this existing group and instead recommends passage of HB 1292 HD 1, the SPO will require specialized help. The Past Performance Task Force envisioned by HB 1292 HD 1 will succeed with the assistance of a professional who has knowledge of past performance, procurement in Hawai'i, the various interests involved, and Hawai'i law. This temporary position will provide administrative support to the Past Performance Task Force, ensure the Task Force complies with the Sunshine Laws, Hawaii Revised Statutes Ch. 92, serve as facilitator and liaison, as well as perform independent research and analysis as required. Accordingly, the SPO would request \$60,000 and a temporary one-year position to facilitate and support the Past Performance Task Force in their charge.

Thank you.

# ***SAH - Subcontractors Association of Hawaii***

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March 4, 2015

Testimony To: House Committee on Finance  
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1292, HD 1 - RELATING TO PROCUREMENT

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We support this bill.

We wholeheartedly agree with the concept of using past performance in order to award a contractor projects using taxpayers money. Endorsing the concept is not a problem. The devil however may be in the details. As a result we fully support the establishment of a task force in order to further investigate the criteria and standards that would be used in order to judge past performance. This is an area that could have many factors that perhaps would not be considered at the outset but only realized after further exploration.

We do however suggest that the task force have increased representation from contractors. As it is right now it appears to be a 7 to 3 composition and we think it would serve the task force well to have more experience on the task force from those who actually bid and participate in the procurement process. As a result we would recommend additional representatives from the construction community and with that amendment we wholeheartedly endorse this bill and recommend its passage.

Thank you.



## HAWAII OPERATING ENGINEERS INDUSTRY STABILIZATION FUND



Affiliated AFL-CIO  
OPEIU - 3 - AFL-CIO (3)

*Uniting our strengths and working together  
for a better tomorrow.*

March 2, 2015

Honorable Sylvia Luke, Chair  
Honorable Scott Y. Nishimoto, Vice Chair  
And Members of the Committee on Finance  
415 South Beretania Street, Room 306  
Honolulu, HI 96813

RE: Comments on HB 1292, HD1 – Relating to Procurement

Chair Luke and Members of the Committee,

My name is Kimberly Ribellia, Government Liaison, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

HOEISF submits comments on House Bill 1292, HD1 which establishes a past performance task force to establish the factors that should be considered when evaluating a construction industry contractor's past performance for the purposes of awarding a construction contract under Chapter 103D, Hawaii Revised Statutes..

HOIESF humbly requests that the committee considers an amendment to HB 1292, HD1. The amendment would modify the task force membership to mirror the membership as outlined in Senate Concurrent Resolution 92, S.D. 2 (2013) which established the Procurement Code Task Force for Construction. The representation of the procurement task force is balanced and will allow more agencies and organizations to participate that have direct experience and stake in the evaluation of construction industry contractor's past performance.

Thank you for this opportunity to testify in this matter.

Sincerely,

A handwritten signature in black ink that reads "Kimberly Ribellia".

Kimberly Ribellia  
Government Liaison  
HOEISF

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Honolulu, HI 96819  
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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 4, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **COMMENTS REGARDING TO H.B. 1292, HD1 RELATING TO PROCUREMENT.** Establishes a past performance task force to establish the factors that should be considered when evaluating a construction industry contractor's past performance for the purposes of awarding a construction contract under Chapter 103D, Hawaii Revised Statutes. (HB1292 HD1)

Hearing

DATE: Wednesday, March 4, 2015  
TIME: 11:00 a.m.  
PLACE: Conference Room 308

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

Thank you for the opportunity to testify on this measure. GCA prefers H.B. 1292, HD1 which proposes to form a Past Performance Procurement Task Force, over other bills on the same subject, because further study is needed to ensure criteria regarding inadequate performance or past performance in public works construction contracts can be fairly implemented and avoid unintended consequences.

For the past two years GCA has been participating in a Procurement Task Force which identified issues of concern with regard to the procurement of public works construction projects - identifying bad contractors was one of the issues identified. It is important to note that **past performance can already be considered in the procurement process under HRS 103D-302(f), Invitation for Bid process, as deemed appropriate by the contracting agencies. Such consideration of past performance does not require a law change; instead it can be implemented through use of current law.** GCA prefers developing and testing criteria determining "inadequate performance" using current law before considering laws that dictate criteria and implementation across the board. Concerns such as closing the door on new small businesses wanting to get into construction with no past performance and who would be doing the rating as well as their objectivity, consistency and fairness need further discussion. Due process concerns also need vetting for those who may feel they have been unfairly rated. In short, the issue is not as simple as it may appear and warrants further review.

GCA supports this measure over HB 1180 which proposes to collect inadequate performance information and create rules that would prohibit a contractor from receiving an award due to alleged “inadequate performance.” These matters must be further studied before such rules or policy is created to penalize a contractor for inadequate performance. Under current law there are safeguards and tools in place that would protect against inadequate performance by a contractor, including performance bond requirements and the use of liquidated damages.

Thank you for the opportunity to share our comments on H.B. 1292, HD1 and for considering our position.